IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. ~~730~~ 43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

Petition for Writ of Certiorari to the Supreme Court of Alabama

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vs.

LEDBETTER ERECTION COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama, entered in the above entitled case on June 28th, 1951, rehearing last denied March 6, 1952.

OPINIONS BELOW

The opinions of the Circuit Court for Montgomery County, Alabama, Judge Walter B. Jones presiding, are not reported. The principal opinion of the Supreme Court of Alabama is reported at .....Ala....., 26 So. (2d) 564. The opinion of the Supreme Court of Alabama, denying an application for rehearing is reported at .....Ala. ....., ... So. (2d) ....., 29 LRR 2415.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on June 28, 1951 (R. 56). The opinion of that Court, affirming the jurisdiction of the Circuit Court to issue a preliminary injunction, at the request of an employer, to restrain alleged violations, by a labor organization, of the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act) was rendered on June 24, 1951 (R. 38). An application for rehearing was filed on July 10, 1951 (R. 57) and was denied in a written opinion January 24, 1952 (R. 54). A second application for rehearing (R. 58) was denied without opinion on March 6, 1952 (R. 58). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

In this case the courts below were called upon to construe and did construe a Federal statute—the Labor-Management Relations Act of 1947—, and the assertion that this construction was erroneous, as well as the assertion of Federal preemption, namely, that the National Labor Relations Board had exclusive jurisdiction to obtain injunctions in Federal Courts for alleged violations of the Act so as to oust state courts of jurisdiction to issue injunctions against such alleged violations at the request of private parties, were both raised in appropriate motions before the Circuit Court for Montgomery County, Alabama (R. 13, 20), and by appropriate Assignment of Errors in the Supreme Court of Alabama (R. 37). Both decision of the Alabama Supreme Court, particularly that on Motion for Rehearings, expressly dealt with these Federal questions (R. 41 and 54) and construed the Act to confer jurisdiction on state courts to issue the type of injunction as above indicated. As stated by that Court in its opinion denying rehearings (R. 55):

> "Considering that release and the urgency of the need for an immediate injunction to prevent irreparable damage, we still think a state court of equity was open to complainant. No other court had jurisdiction. The only other remedy was before the Board.

> We think the authorities support the view that a state court of equity has jurisdiction upon a showing of extraordinary circumstances of irreparable injury."

An important collateral question of jurisdiction is presented in this case for the reason that the injunctive relief sustained below was temporary rather than final, and this Court ordinarily declines review in such circumstances. See *Moses v. Mayor*, 15 Wallace 387; *Williams v. Quill*, 303 U.S. 621. However, in those cases and other cases in which this Court has declined to review decisions where only temporary injunctive relief was involved, the merits of the case were at issue—that is, whether a Federal law had in fact been violated or a constitutional right invaded. Here, the very and, indeed, the sole point at issue is whether state courts can have *jurisdiction* to issue *either* temporary or permanent relief for alleged violations of the Labor-Management Relations Act of 1947 in view of the exclusive jurisdiction conferred upon the Board by that Act to obtain such relief in the Federal courts, and the merits—that is, whether the Act was or was not violated—were not at issue or adjudicated and, in fact, defendants did not controvert the allegations of violations of the Federal law (R. 19). Thus, for the purpose of obtaining an adjudication of the question involved in this appeal, it not only would make no difference whether the injunction in question was a preliminary or final one, but the issue, in so far as it involves the administration of the Labor-Management Relations Act of 1947, is in fact heightened because of the fact that temporary rather than ultimate relief was afforded and is here involved. The problems presented by the indiscriminate granting of temporary injunctions in labor disputes upon application of private parties are well known to Congress and this Court (see Frankfurter and Greene, *The Labor Injunction*), and, as will be seen later, Congress took special precautions to strictly limit the granting of any temporary relief for alleged violations of the Federal Act. On this question of jurisdiction of state courts

to issue such injunctions the judgment of the Alabama Supreme Court is final and conclusive in the State of Alabama and effectively disposes of that issue in a manner adverse to the interests of petitioner and others similarly situated and adversely to the position taken by the National Labor Relations Board in its construction and administration of the Federal Act. See *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 183. It is respectfully submitted that this Court should take jurisdiction to review the Alabama decision herein for the very reason that the injunction is a preliminary one and the question of jurisdiction to issue either that or a final injunction has finally and conclusively been adjudicated by the court below. *Cf. Radio Station WOW v. Johnson*, 326 U.S. 120, 123-126; *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62.

QUESTION PRESENTED

Whether the Labor-Management Relations Act of 1947 confers exclusive jurisdiction on the National Labor Relations Board to seek preliminary injunctive relief against alleged violations of such Act so as to preclude the exercise of jurisdiction by state courts to issue such injunctions at the request of private parties.

STATUTE INVOLVED

The pertinent statutory provisions, which are Section 10, subsections (a), (h), (j), (k) and (l) of the Labor-Management Relations Act of 1947, are set forth in Appendix A attached hereto.

STATEMENT

As seen from the complaint (R. 3-5), Bear Brothers, general contractors, had entered into a contract with Montgomery Towers, Inc., for the construction of a large apartment house in the city of Montgomery. Bear Brothers then contracted with the respondent Ledbetter Erection Company to erect and rivet all the constructural steel necessary for construction of the apartment house build-

ing. Petitioner, Montgomery Building and Construction Trades Council, seeking recognition from Bear Brothers, placed a picket line across the entrance to the property where the building was being constructed.

In its complaint in the Circuit Court for Montgomery County, Alabama, respondent Ledbetter Erection Company asserted that petitioners, by such conduct, had violated Section 8(b)(4) and 303 of the Labor-Management Relations Act of 1947 (R. 5) and asked for injunctive relief against such alleged violations (R. 9). Petitioners answered (R. 14) to which respondent Ledbetter responded by an affidavit setting out in detail the interstate aspects of the construction project involved and the manner in which interstate commerce was affected by the alleged unfair practices (R. 21). In its complaint respondent had sought preliminary injunctive relief (R. 9), which relief was granted *ex parte* by the Circuit Court on November 20, 1951 (R. 10, 11). Petitioners then filed a motion and an amended motion to vacate the injunction in which the exclusive jurisdiction of the National Labor Relations Board to obtain such temporary relief was asserted (R. 12, 19). This motion was denied on December 21, 1951 (R. 33), which denial was then appealed to the Supreme Court of Alabama (R. 36, 37). After considering briefs and oral argument, that court issued its two opinions as aforesaid, the second Application for Rehearing being denied without opinion on March 6, 1952 (R. 58).

SPECIFICATIONS OF ERROPS TO BE URGED

The Supreme Court of Alabama erred:

1. In holding that the Labor-Management Relations Act of 1947 did not preclude the exercise of jurisdiction by state courts to issue injunctive relief at the request of private individuals for alleged violations of that Act.

2. In failing to hold that the Circuit Court of Montgomery County, Alabama, was without jurisdiction to issue the injunction herein, enjoining alleged violations of the

Labor-Management Relations Act of 1947, and in refusing to dissolve such injunction.

REASONS FOR GRANTING WRIT

1. The decisions of the Supreme Court of Alabama in the instant case are in direct conflict with the decisions of the Supreme Court of California in *Gerry v. Superior Court*, 32 Cal. (2d) 119, 194 P. (2d) 689, and of the Supreme Court of Minnesota in *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 46 N.W. (2d) 94, petition for rehearing denied, 232 Minn. 111. These courts, together with the following trial or intermediate appellate courts, hold specifically that state courts do not have jurisdiction to enjoin alleged violations of the Labor-Management Relations Act of 1947: Mississippi Chancery Court, Leake County, in *Reed Construction Co. v. Jackson Building Trades Council*, 27 LRRM 2161; Tennessee Court of Appeals in *Robinson Freight Lines v. Teamsters Union*, 28 LRRM 2453; Pennsylvania Court of Common Pleas, Luzerne County, in *Wilkes Sportswear, Inc. v. ILGWU*, 29 LRRM 2300. In addition, the decisions of the Alabama Supreme Court herein are in conflict with the rationale and reasoning of the United States Court of Appeals for the Fifth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2) 183, and the United States Court of Appeals for the Eighth Circuit in *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. (2d) 902, both of which hold that, under the Labor-Management Relations Act of 1947, the National Labor Relations Board has exclusive jurisdiction to seek injunctive relief in the Federal Courts for violations of that Act. Compare, however, *Goodwins v. Hagedorn*, 303 N.Y. 390; *Kincaid-Webber Motor Co. v. Quinn*, ...Mo....., 241 S.W. (2d) 886.

Only a determination by this Court can resolve the conflict in decision as indicated above. See *Fischer v. Pauline Oil and Gas Company*, 309 U.S. 294, at 296.

2. An important question involving the construction and

administration of the Labor-Management Relations Act of 1947 is involved in this case. If the decisions of the Supreme Court of Alabama are left undisturbed, administration of the Act by the National Labor Relations Board in this and other states adopting similar views will be seriously hampered; it is not difficult to imagine the confusion and chaos which would result if the numerous state courts throughout the country were called upon to determine whether sufficient evidence of violations of the Federal Act were indicated to justify the granting of injunctive relief to private litigants while charges of the same violations may be pending before or under investigation by the Board charged by Congress to make such determinations. Nor is it hard to conceive that some employers would invariably seek to circumvent that tribunal of specialists in favor of adjudicators more inclined to their views. Further, the Congressional intent, as clearly expressed under Section 10 of the Act, to limit the granting of equitable relief for alleged violations of the Act will be flouted. Labor organizations and their members in states holding views similar to that of the Alabama Supreme Court will be subjected to abuses of the injunctive process that gave rise to the passage of the Norris-LaGuardia Act in 1932 and the whole Federal policy of carefully restricting the use of injunctions in labor disputes, as expressed in the Norris-LaGuardia Act and as expressed in the Labor-Management Relations Act of 1947 in respect to disputes in industries affecting interstate commerce, (see *Amazon Cotton Mill v. Textile Workers Union, supra,* at 186) will come to naught. Clearly, it is in the public interest for this Court to resolve the question involved in this case.

3. The decision of the Alabama Supreme Court is believed to be erroneous. The argument advanced by that Court that the National Labor Relations Board might not take jurisdiction, and that therefore the State courts could, forgets, first, that the Board has not to this date ceded jurisdiction to any State agency in Alabama, as it is per-

mitted to do under Section 10(a) of the Act, and, in the absence of such express ceding, the Board has exclusive jurisdiction so that it is immaterial whether the Board may or may not assert jurisdiction, and, second, that the respondent Ledbetter has not to this date attempted to invoke the jurisdiction of the National Labor Relations Board, as by the filing of charges under Section 10 or otherwise.

It is submitted that the conflicting decisions of the California and Minnesota Supreme Courts, referred to above, as well as the conflicting reasoning of the decisions of the Fifth and Eighth Circuits, also referred to above, constitute the correct interpretations of the Labor-Management Relations Act of 1947. In particular, the reasoning of the Fifth Circuit in the *Amazon Cotton* case, *supra*, is persuasive. That Court, speaking through Judge Parker, was of the opinion (1) that under the Norris-LaGuardia Act of 1932, the National Labor Relations Act of 1935, and the Labor-Management Relations Act of 1947, the Congress indicated a specific intent to greatly limit and restrict the use of the injunctive process in the Federal Courts in cases involving labor disputes, and in industries affecting interstate commerce in respect to various practices which the Congress, in Section 8 of the Act, had defined as "unfair labor practices;" (2) that this Congressional objective was prompted by the history of abuses of the injunctive process, particularly in respect to the granting of preliminary injunctions during the period which preceded the passage of the Norris-LaGuardia Act; (3) that, as indicated by the debates preceding the passage of the Labor-Management Relations Act of 1947 and as indicated by the various committee reports in respect to such Act, it was the intent of Congress to screen the use of injunctions in respect to alleged violations of that Act by providing for preliminary investigation by the National Labor Relations Board before temporary relief could be sought, and by further providing that only the National Labor Relations Board, acting through its general counsel, could have a standing to seek

any type of equitable relief against any alleged violations. The debates and reports indicated that Congress, involved in a very controversial subject, carefully weighed the injustices which might result were private litigants denied the right to seek temporary relief in cases of alleged irreparable injury, with the abuses which might result if a free use of the injunctive process was granted to private individuals, and concluded that the method of granting the right of preliminary relief to the Board only, acting in the public interest, together with the right given employers to sue for damages in the Federal Courts for alleged violations of Section 303(a) of the Act, afforded adequate relief and outweighed the possibility of abuses which might result were the unlimited right to seek injunctions granted private litigants. Accordingly, the Court concluded that only the National Labor Relations Board, and not private parties, had the right to seek temporary relief for alleged irreparable damage caused by alleged violations of the Labor-Management Relations Act of 1947.

Judge Parker pointed out the disastrous consequences which would result were private litigants given the right to seek equitable relief for alleged violations of the Act:

> "If labor unions are permitted to invoke the injunctive process of the courts under the Act, so also are employers. If they may invoke jurisdiction of the courts where they themselves have appealed to the Labor Board, they may invoke it where the adversaries have appealed to that Board. It would follow, therefore, that upon the beginning of a proceeding before either the Board or a court, the party proceeded against could, and probably would, begin a proceeding in the other tribunal. More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly, the statute should not be given an interpretation which would lead to such consequences."

Judge Parker concluded:

> ". . . [I]t is hardly reasonable to suppose that Congress intended the District Courts to have general power to grant injunctive relief, at the suit of either unions or employers, with respect to any unfair labor practice that might exist, while limiting with such meticulous care the cases in which those courts might grant injunctive relief upon petition of the Labor Board or the Attorney General acting under the direction of the President. Expressio unius est exclusio alterius."

Judge Parker was presumably referring to the many Federal District Courts; the confusion which he predicted would, of course, be compounded a thousand times were state courts as well to have the jurisdiction deemed to be theirs by the Supreme Court of Alabama. Clearly, the Alabama decision is erroneous and, in the public interest, should be reviewed and reversed under the reasoning of the Fifth Circuit in the *Amazon Cotton Mill* case, *supra*, and under the reasoning of this Court in such cases as *General Committee v. Missouri, K.T.R. Co.*, 320 U.S. 323, at 332; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261; *Bethlehem Steel Company v. New York Labor Relations Board*, 330 U.S. 767; *International Union v. O'Brien*, 330 U.S. 454; *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383; and *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U.S. 953. The above line of authorities, commencing with the *Bethlehem Steel Company* case, all indicate that the Federal government has preempted the field of certain Congressionally defined unfair labor practices in industries affecting interstate commerce, so that state tribunals may not attempt to exercise even concomitant jurisdiction in respect to those labor activities concerning which Congress has made specific regulation. See also Cox and Seidman, "Federalism and Labor Relations," 64 Harv. L. Rev., 211, at 221.

CONCLUSION

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * * * * *

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

* * * * * * * * *

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for

appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of

law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).